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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

RAY ALLEN BEATY,

Defendant and Appellant.

F076380

(Super. Ct. No. 1485160)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Joseph R. Distaso, Judge.

Deborah L. Hawkins, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and F. Matt Chen, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant Ray Allen Beaty challenges his convictions arising from his assault and rape of Jane Doe. He argues the trial court erred in admitting propensity evidence under Evidence Code section 1108 because such evidence was more prejudicial than probative,

thus violating his rights to due process and a fair trial. Defendant further contends the trial court erred in admitting evidence he searched for a prostitute after his encounter with Jane Doe because such evidence was irrelevant and prejudicial. If that issue is deemed waived, defendant contends his counsel was ineffective for failing to object. Finally, he argues insufficient evidence supports the great bodily injury enhancement to his rape conviction.

We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On March 6, 2015, Jane Doe was working as a prostitute out of the Super 8 Motel in Modesto. She advertised on a Web site called Backpage.com using a picture that was not her. That evening, defendant contacted her through text messages and phone calls, and they arranged for “a half-hour stay” which included sex and a massage for \$120. Jane gave defendant directions to the motel and he arrived at her room. Defendant was “iffy” because Jane did not match the pictures online, but he agreed to proceed. He told Jane he only had \$100 and she agreed to that price. Defendant gave Jane five \$20 bills and they both undressed.

They began to have intercourse during which defendant punched Jane in the face. Jane blacked out and woke up in a different position with defendant’s hands around her neck, choking her. Jane could not breathe or scream; she thought she was going to die. Defendant then told her he would let go if she promised not to scream. He released Jane and told her he would kill her to make sure she did not scream. He then told Jane he wanted to have sex with her again; she said no. Defendant proceeded to have sex with Jane against her will while she had blood all over her face. After defendant finished, he went to the restroom and washed blood off his hands. He got dressed and took back the money he had given Jane, which she had put in a drawer. Before leaving, defendant also grabbed Jane’s personal cellular phone and told her he would kill her if she called the

police. He instructed Jane to wait at the window, watch him as he left, and that he would leave her phone behind.

Jane watched defendant get in his car and drive away. She then got dressed and went to search for her phone outside. When she could not find it, she went back to her room, packed up, and drove up the street where she saw two police officers in the parking of an In-N-Out Burger fast-food restaurant. She approached the officers, including Detective Michael Hicks, and told them what happened to her. Jane accompanied the officers back to the motel and described her assailant as a White male in his 30's with red hair. At the motel, the police showed Jane some photographs, including one of defendant, and Jane identified defendant as the perpetrator. At trial, Jane again identified defendant as the person who had raped her.

Later, Jane went to the hospital where a rape kit was prepared and an X-ray taken. Jane's lip, which had been split open, was stitched and the bruises on her face and a bump on her forehead were evaluated. Jane's face was swollen from the beating and her tooth was broken, but she had to wait until her lip healed before they could repair her tooth. It took multiple visits to repair Jane's tooth. Senior criminalist Sara Penn presented DNA evidence that the semen detected on an anal swab taken from Jane Doe belonged to defendant. The People introduced photographs of Jane's injuries at trial. The People also introduced photographs of the motel room taken after the incident depicting blood and a condom on the bed.

Detective Hicks testified Jane Doe approached him at the In-N-Out Burger at 10:46 p.m. on March 6, 2015. Jane was crying and bleeding quite a bit when he met her and she was in "need of immediate medical attention." He also noticed redness and swelling on Jane's neck. Jane reported the incident and described the suspect as an approximately 200-pound White male adult in his 30's with red hair and a trimmed beard wearing blue jeans and a light-colored shirt. She also reported the suspect was driving a brown and burgundy Chrysler Sebring.

Detective David Ramirez assisted Detective Hicks in investigating the incident. He was present when Jane described the vehicle in which the suspect had left. Ramirez recalled assisting another officer with a traffic stop of a car that matched Jane's description a few minutes earlier. The traffic stop occurred approximately half a mile from the Super 8 Motel. Another officer who was involved with the traffic stop brought over a photograph of the car that was stopped and Jane identified it as the suspect's car. Detective Hicks identified defendant as the driver and obtained a photograph of him. Jane identified defendant as her attacker.

Officer David Lewellen went to the Super 8 Motel with Detective Hicks and investigated the crime scene. When he entered the room, he noticed blood and two used condoms on the bed and a \$20 bill on the floor. Jane described the perpetrator to Lewellen as having a tattoo on the left side of his chest. While he was at the motel, Lewellen obtained a name and date of birth for the suspect, which led him to defendant's home. Defendant opened the door without a shirt on and Lewellen noticed he had a tattoo on the left side of his chest. Officer Bradley Beavers also went to defendant's house that night and conducted a search of the premises. He found a pair of jeans behind the front door with four \$20 bills in the pocket.

Detective Philip Weber testified about data extracted from defendant's phone. On the date of the offense, defendant's phone reflected searches and responses to multiple "ads" on both Craigslist and Backpage.com for escort or prostitution services. Detective Weber also located audio files from Google maps reflecting directions from the area where defendant resided to the area of the Super 8 Motel. He also testified there were outgoing calls from defendant's phone to Jane Doe's phone number at 9:21 p.m. and 9:24 p.m. on March 6, 2015.

Defendant was convicted of (1) rape of Jane Doe by force or fear (count I) in violation of Penal Code section 261, subdivision (a)(2), enhanced by allegations that during the commission of the offense defendant personally inflicted great bodily injury

upon Jane Doe in violation of section 12022.7, subdivision (a), and he committed acts as set forth in section 667.61, subdivision (c); (2) robbery in violation of section 211 (count II); and (3) making criminal threats in violation of section 422 (count III). The court sentenced defendant in accordance with section 667.61 to 25 years to life on count I and stayed the three-year great bodily injury enhancement. It also sentenced defendant to an additional and consecutive aggravated term of five years on count II and an additional and consecutive aggravated term of three years on count III that was stayed pursuant to section 654. The court further enhanced defendant's sentence by two years for two prior prison commitments pursuant to section 667.5.

DISCUSSION

I. Admission of Evidence Code Section 1108 Propensity Evidence

Defendant first contends the trial court erred in admitting evidence of his other sexual offense convictions pursuant to Evidence Code section 1108 because such evidence was more prejudicial than probative.

A. Relevant Factual Background

Before trial began, the prosecution moved to admit and defendant moved to exclude evidence of defendant's prior uncharged acts of sexual misconduct under Evidence Code section 1108. Defendant argued such evidence should be excluded under section 352 because they were remote (the convictions were seven years old), they were "sufficiently unrelated," and "there is a possibility that the jury will be distracted and inflamed by that 1108 evidence." He objected both to the admission of the records of the convictions and the related live testimony. The prosecutor stated she intended to introduce such evidence through certified convictions to lessen any prejudicial effect and the possibility of inflaming the jury.

After conducting a balancing test on the record, the court held such evidence admissible:

“Well, here’s the thing: So the evidence is permitted pursuant to 1108. The way the People intend to introduce it is in some ways limiting the state of the evidence, because it’s just the bare fact of the conviction. There’s less of an emotional component to it. And, in fact, that’s exactly—I’m reading from Simons California Evidence Manual, Section 2, dash, 104, and that’s pretty much exactly at the bottom note, the comment is it’s the preferred method to introduce that when you’re balancing a 352-type situation. So it seems the People have done exactly what’s required—not required, but preferred, I suppose is a better word, in this situation. That doesn’t mean they can’t call the live witnesses, but they’re not intending to here, and that is certainly a significant factor for the Court to consider in a 352 balancing.

“The convictions are not that old. It’s not like a 20-year-old misdemeanor. And the Evidence Code specifically admits—I mean, permits introduction of this type of evidence as propensity evidence.

“So in balancing now as I just have, I think the balance weighs in favor of admitting the evidence. I don’t see that it’s so prejudicial that it would overcome any probative value, so the Court is going to overrule that objection. I’m going to admit those two convictions.”

The prosecution presented certified records of defendant’s misdemeanor convictions for sexual battery on February 21, 2007 (Pen. Code, § 243.4) and annoying or molesting a child on October 5, 2007 (*id.*, § 647.6).

The court also later held admissible live testimony of the detective who investigated the October 5, 2007, offense during which defendant grabbed the breast of a teenage female at a bus stop. Overruling defendant’s Evidence Code section 352 objection, the court held the detective’s testimony regarding defendant’s admissions made during the investigation—including that he had “a problem” and that such conduct “gives him a high”—was “highly probative” because it provides “the reasons why the defendant would engage in this particular type of conduct” and is “not so prejudicial in the sense that it’s just the detective’s testimony.”

Accordingly, retired detective Erik Jones testified he interviewed defendant in October 2007 as part of the investigation into the report of annoying or molesting of a minor. Jones explained earlier that day a 15-year-old girl reported she had been sexually

assaulted: “somebody had run up from behind her, grabbed her, and squeezed one of her breasts” while she waited for her bus to school. Defendant admitted committing the offense and responded “that he had urges like that and he kind of got a high from it.” “He said that he was driving on Orangeburg, and he had driven by her and saw her standing just on the sidewalk next to Orangeburg and decided that he was going to go back and squeeze her breast.” Defendant admitted to doing something similar previously in Nebraska.

B. Standard of Review and Applicable Law

Evidence of prior criminal acts is ordinarily inadmissible to show a defendant’s disposition to commit such acts. (Evid. Code, § 1101.) But the Legislature has created exceptions to this rule in cases involving sexual offenses (*id.*, § 1108) and domestic violence (*id.*, § 1109). And the California Supreme Court has held that section 1108 conforms with the requirements of due process. (*People v. Falsetta* (1999) 21 Cal.4th 903, 915–916.)

Evidence Code section 1108 provides in a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant’s commission of another sexual offense or offenses is not inadmissible character evidence under section 1101, if such evidence is not inadmissible pursuant to section 352. (§ 1108.) Section 352 affords the trial court discretion to exclude such evidence if its probative value is “substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (*Ibid.*) “““As with other forms of relevant evidence that are not subject to any exclusionary principle, *the presumption will be in favor of admission.*”” [Citation.]’ [Citation.]” (*People v. Loy* (2011) 52 Cal.4th 46, 62.)

In deciding whether to exclude evidence of another sexual offense under Evidence Code section 1108, “trial judges must consider such factors as its nature, relevance, and possible remoteness, the degree of certainty of its commission and the likelihood of

confusing, misleading, or distracting the jurors from their main inquiry, its similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense, and the availability of less prejudicial alternatives to its outright admission, such as admitting some but not all of the defendant's other sex offenses, or excluding irrelevant though inflammatory details surrounding the offense.' [Citation.]" (*People v. Story* (2009) 45 Cal.4th 1282, 1295.) "[T]he charged and uncharged crimes need not be sufficiently similar that evidence of the latter would be admissible under Evidence Code section 1101, otherwise Evidence Code section 1108 would serve no purpose. It is enough the charged and uncharged offenses are sex offenses as defined in section 1108.' [Citation.]" (*People v. Loy, supra*, 52 Cal.4th at p. 63.)

"A challenge to admission of prior sexual misconduct under Evidence Code sections 1108 and 352 is reviewed under the deferential abuse of discretion standard and will be reversed 'only if the court's ruling was "arbitrary, whimsical, or capricious as a matter of law."' [Citation.]" (*People v. Robertson* (2012) 208 Cal.App.4th 965, 991.)

C. Analysis

Defendant argues his prior misdemeanors had "little probative value" and were "highly prejudicial" because their admission made defendant "highly unlikeable." He asserts the admission of such evidence prejudiced the jury against him and "predispose[d] the jury to vote for a great bodily injury enhancement to punish [defendant] for the charged and uncharged conduct." The People argue the trial court did not err in admitting such evidence because defendant's "prior conduct was similar to the current offense in that both involved uninvited and unconsented-to sexual conduct" and "the prior offense[s] [were] no more inflammatory than the charged offense." Additionally, the People argue defendant cannot establish prejudice given the "extensive evidence of [defendant's] guilt" and the inclusion of CALCRIM No. 1191 in the jury instructions,

which instructed the jury that it could only consider the prior offense as a factor in determining defendant's guilt.

We cannot conclude the trial court abused its discretion in admitting the challenged evidence. Here, after conducting the requisite Evidence Code section 352 balancing of factors, the court allowed the certified conviction records and Detective Jones's brief testimony regarding defendant's admissions of his reasons for committing a sexual offense. The court did not permit a prolonged presentation of evidence of details of these previous offenses, and it noted the probative value of the limited evidence offered. The prior offenses were sufficiently related sexual offenses under section 1108. (See § 1108, subd. (d).) The facts of these previous offenses, although unpleasant, were not particularly inflammatory compared to the nature of the crimes charged in this case. (See *People v. Loy*, *supra*, 52 Cal.4th at p. 62.) Both prior offenses resulted in convictions; thus, defendant bore no new burden of defending against these uncharged offenses and there was less likelihood of juror confusion. (See *id.* at p. 61 [prior conviction for sexual offense admitted as propensity evidence under § 1108 diminishes its potential for prejudice].) Additionally, the court considered and rejected defendant's argument the convictions were remote in time, and we similarly cannot conclude the seven-year-old convictions merited exclusion due to remoteness. Under these circumstances, we cannot conclude the trial court abused its discretion in admitting evidence of defendant's prior convictions pursuant to section 1108.

II. Admission of Evidence of Defendant's Subsequent Conduct and Ineffective Assistance of Counsel

Defendant next argues the trial court erred in admitting evidence of his conduct after his encounter with Jane Doe—namely, evidence of his subsequent search for and inquiry into sexual services online. If this issue is deemed waived, he argues his counsel provided ineffective assistance by failing to object.

A. Relevant Factual Background

Before trial, the prosecutor sought admission of evidence of defendant's previous uses of Backpage.com, his past engagement of other prostitutes, and evidence he solicited another prostitute immediately after the rape of Jane Doe. The prosecutor argued defendant's frequent use of Backpage.com and prostitutes was probative of his identity as the person who contacted Jane Doe and sought out her services as a prostitute.

Defendant moved in limine: "that all evidence that does not specifically relate to this alleged sexual encounter be excluded under Evidence Code 352," and he argued much of the requested evidence including Web history dating back to December 2014 was "irrelevant under 352." Defense counsel, however, agreed: "[A]fter the alleged conduct from March 6, ... information that [defendant] went to backpage and viewed backpage, and there's some text messages to a prostitute ... because of the closeness of time on March 6 ... is relevant."

The court allowed evidence pertaining to Jane Doe and messages from March 6, 2015, and March 7, 2015, but excluded evidence of defendant's other previous searches for and contacts with prostitutes:

"THE COURT: Well, so it's basically, in effect, information that's requested to be admitted under 1101, right, for identity, but that requires very, very specific information, such that it's like a signature. I mean, that's really what's required for identity.

"Here it's, you know, he's visiting these ads and setting up meetings with other alleged prostitutes. I'm not sure that's such a signature. I mean, just from my work in this particular job, that seems to be not an uncommon way that people connect for this type of activity. I just don't see—I just don't see—I think it's clearly relevant the things that occurred right around the date in question here, like the messages on the date in question as well as even the next day, morning messages.... The setting up of the information between the defendant and the alleged victim, that's clearly relevant. The audio file directions wherever to get to this place, that's clearly relevant, I would admit that, and the phone calls made to her.

"But the information regarding the other alleged prostitutes, I just don't see that that's such a signature method that it would rise to the

identity. I mean, the identity requires very specific information. I just don't see that it rises to that.

“So what I'm going to do is I'm going to allow in all the information as it relates to Miss Doe, including anything that occurred on March 6 and 7, but I'm going to exclude the other information regarding the other prostitutes ... that ... is more prejudicial than probative”

Accordingly, in discussing data retrieved from defendant's phone, Detective Weber testified there was a gap of relevant data from 9:24 p.m. until 11:14 p.m. on March 6, 2015, but at 11:14 p.m., “the phone begins doing more Web history searches for backpage ads again” and it displayed correspondence arranging sexual services with another woman for that night. The text messages reflect an inquiry into what services could be provided for \$80 and an arrangement for services to be provided at defendant's address (the same address where police later apprehended defendant), but the woman later canceled.

B. Standard of Review and Applicable Law

1. Character Evidence

Character evidence is evidence of a person's propensity or tendency to act in a certain way under certain circumstances. (See *People v. Long* (2005) 126 Cal.App.4th 865, 871.) Evidence Code section 1101, subdivision (a) states the general rule that “evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion.” Section 1101, subdivision (b), however, authorizes the admission of evidence “a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act.” (*Ibid.*)

2. *Ineffective Assistance of Counsel*

A defendant claiming ineffective assistance of counsel must satisfy the two-part test of *Strickland v. Washington* (1984) 466 U.S. 668 (*Strickland*) requiring a showing of counsel's deficient performance and resulting prejudice. (*Id.* at p. 687.) As to deficient performance, a defendant "must show that counsel's representation fell below an objective standard of reasonableness" measured against "prevailing professional norms." (*Id.* at p. 688.)

In evaluating trial counsel's actions, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." (*Strickland, supra*, 466 U.S. at p. 689; accord, *People v. Dennis* (1998) 17 Cal.4th 468, 541.) Thus, a defendant must overcome the presumption that the challenged action might be considered sound trial strategy under the circumstances. (*Strickland, supra*, at p. 689; *People v. Dennis, supra*, at p. 541.) "The constitutional standard of performance by counsel is 'reasonableness,' viewed from counsel's perspective at the time of his challenged act or omission. [Citations.]" (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1243–1244, superseded by statute on other grounds as stated in *In re Steele* (2004) 32 Cal.4th 662, 690.) "'Tactical errors are generally not deemed reversible; and counsel's decisionmaking must be evaluated in the context of the available facts. [Citation.] To the extent the record on appeal fails to disclose why counsel acted or failed to act in the manner challenged, we will affirm the judgment 'unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation' [Citation.]" [Citations.]" (*People v. Hart* (1999) 20 Cal.4th 546, 623–624.)

The prejudice prong requires a defendant to establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Strickland, supra*, 466 U.S. at p. 694.) "A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Ibid.*)

C. Analysis

Defendant contends evidence of his subsequent phone and Web activity on the date of the offense “was nothing more than bad character evidence and was inadmissible.” In support, he asserts such evidence was inadmissible under the limited exception to the general bar against character evidence provided by Evidence Code section 1101, subdivision (b).

Defendant concedes his counsel did not specifically object to the admission of such evidence. Indeed, defense counsel expressly agreed such evidence was relevant and admissible. Defendant may not complain on appeal that evidence was inadmissible on a certain ground if he did not rely on that ground in a timely and specific fashion in the trial court. (See Evid. Code, § 353; see also *People v. Medina* (1995) 11 Cal.4th 694, 729 [failure to object waives claim of error based on Evid. Code, § 1101].) Thus, this issue is forfeited on appeal.

Nevertheless, defendant asserts, if the issue is deemed waived, his counsel was ineffective in failing to object. But the record before us does not reflect why defense counsel did not object to the now challenged evidence, nor was he asked to explain his reasoning. And this is not a situation where “there simply can be no satisfactory explanation.” (*People v. Scott* (1997) 15 Cal.4th 1188, 1212.) Rather, defense counsel could have reasonably believed evidence of defendant’s subsequent conduct on the date of the offense was not character evidence contemplated by Evidence Code section 1101. Such evidence was relevant—not because it showed defendant’s propensity to use prostitutes, but because it yielded material facts linking defendant to the charged offense. (E.g., § 210 [evidence is relevant if it has “any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action”].) Specifically, evidence of the gap in defendant’s phone activity corroborated the time during which the offense was alleged to have occurred. The subsequent request for services at defendant’s address linked defendant to the phone used to arrange the meeting with Jane Doe. Additionally, the sender’s message that he had only \$80 further

implicated defendant as the perpetrator given the evidence defendant took four \$20 bills from Jane when he left, leaving one \$20 bill on the floor of the hotel room, and police found four \$20 bills in defendant's pocket when they apprehended him. Accordingly, counsel could have reasonably concluded an objection would have been futile.

Irrespective, we cannot conclude defendant has established he was prejudiced by his counsel's failure to object. The evidence against defendant was strong. Jane Doe identified defendant as her attacker immediately after the incident and at trial. She accurately described him, including a distinctive tattoo on his chest, and his car to police on the date of the offense. Extensive evidence corroborated Jane's version of the events, including messages between Jane's phone and defendant's phone from the night of the offense reflecting the two arranged to meet. Data from defendant's phone established a search was made for directions to the area near the Super 8 Motel where Jane was located on the night of the offense. Jane's testimony defendant gave her five \$20 bills for her services and then stole them was also corroborated. Police found \$20 on the motel room floor and four \$20 bills in defendant's possession when contacted that night. There was also strong evidence the DNA found on Jane's body after the offense belonged to defendant. Finally, the People presented testimony and photographs of Jane's injuries resulting from the offense. Thus, even if defense counsel had objected and the court had excluded evidence of defendant's subsequent conduct the night of the offense, we cannot conclude there is a reasonable probability the result of the proceeding would have been different.

III. Sufficiency of the Evidence of Great Bodily Injury Enhancement

Lastly, defendant argues the evidence was insufficient to support the great bodily injury enhancement to his rape conviction.

A. Standard of Review

“When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to

determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Edwards* (2013) 57 Cal.4th 658, 715.) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support”’ the jury’s verdict.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) The jury’s findings on enhancement allegations are reviewed under the same standard. (See *People v. Wilson* (2008) 44 Cal.4th 758, 806.)

B. Applicable Law

“‘Great bodily injury’ means a significant or substantial physical injury.” (Pen. Code, § 12022.7, subd. (f).) “It is well settled that the determination of great bodily injury is essentially a question of fact, not of law. “Whether the harm resulting to the victim ... constitutes great bodily injury is a question of fact for the jury. [Citation.] If there is sufficient evidence to sustain the jury’s finding of great bodily injury, we are bound to accept it, even though the circumstances might reasonably be reconciled with a contrary finding.” [Citations.]” *People v. Escobar* (1992) 3 Cal.4th 740, 750.) ““A fine line can divide an injury from being significant or substantial from an injury that does not quite meet the description.” [Citations.] Where to draw that line is for the jury to decide.” (*People v. Cross* (2008) 45 Cal.4th 58, 64.)

C. Analysis

Defendant argues the evidence was insufficient to support the great bodily injury enhancement because the harm Jane Doe suffered was “not greater than ‘moderate harm’” and, though Jane testified defendant choked her and she lost consciousness, there was no injury to her neck. We disagree.

Here, defendant struck Jane Doe with such force she became unconscious while they were engaged in intercourse. Defendant then choked Jane so hard she could not breathe or scream and she thought she was going to die. The pressure caused Jane’s neck

to appear red and swollen when police encountered her, and Jane was in immediate need of medical attention when police first met her. Defendant's blow not only caused Jane to black out, she awoke with her face swollen and covered in blood, and she had to have stitches in her lip and a broken tooth repaired. It took Jane multiple visits to the dentist to have her tooth repaired. Viewing such evidence in the light most favorable to the jury's conclusion, we conclude sufficient evidence supports the jury's finding of great bodily injury. (See *People v. Mixon* (1990) 225 Cal.App.3d 1471, 1489 [great bodily injury enhancement supported by evidence defendant strangled victim with scarf tight enough to nearly cause her to pass out, she felt herself choking and could not breathe, she felt pain around her neck, defendant struck her with a strong blow on her head causing her to momentarily lose consciousness, and she was in great pain]; *People v. Hale* (1999) 75 Cal.App.4th 94, 108 ["[victim's] broken and smashed teeth, split lip and cut under her eye are sufficient evidence of great bodily injury"]; see also *People v. Harvey* (1992) 7 Cal.App.4th 823, 827–828 [burns to victim's face were great bodily injury where they required repeated medical treatments].)

DISPOSITION

The judgment is affirmed.

PEÑA, J.

WE CONCUR:

POOCHIGIAN, Acting P.J.

DETJEN, J.